



This Recommended Order and Decision became the Order and Decision of the
Illinois Human Rights Commission on 8/12/02.

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
TYLEE MARTIN,)	
)	
Complainant,)	
)	Charge No.: 2000CE3005
and)	EEOC No.: 210A02492
)	ALS No.: 11640
CHICAGO BOARD OF EDUCATION)	
and ASHLEY'S CLEANING SERVICE,)	
INC.,)	
Respondents.)	

RECOMMENDED ORDER AND DECISION

On October 24, 2001, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Tylee Martin. That complaint alleged that Respondent, Chicago Board of Education, discriminated against Complainant on the basis of a physical handicap when it harassed him on the job. The complaint did not make any allegations against the second named respondent, Ashley's Cleaning Service, Inc. As a result, despite the caption in this matter, Chicago Board of Education is the only real respondent.

This matter now comes on to be heard on Respondent's Motion to Dismiss Complaint. Although he was given leave to file a response to the motion, Complainant has not done so and the time for filing a reply has passed. Therefore, the matter is now ready for decision.

FINDINGS OF FACT

The following findings are based upon the record file in this matter. For purposes of ruling on the motion to dismiss, all well-pleaded facts were taken as true.

1. Respondent, Chicago Board of Education, contracts with Ashley's Cleaning Service, Inc. to provide cleaning services for its schools.

2. Ashley's Cleaning Service assigned Complainant, Tylee Martin, to work in one of Respondent's schools.

3. Complainant has a physical handicap, malignant neoplasm of the brain. That condition causes partial paralysis to Complainant's left side.

4. Respondent was aware of Complainant's handicap.

5. During the time of the alleged incidents, Ben Thompson worked for Respondent as an Assistant Engineer.

6. In September of 1999, Thompson told Complainant, "Move out of the way, so that someone more capable can move that cabinet because of your disability."

7. In November of 1999, Thompson told Complainant, "You can't move those boxes, because of your disability."

8. In February of 2000, Complainant brought his child to work for several hours. While pointing to Complainant's leg, Thompson said, "I don't bring my kids here, and just because you are that way, you can't bring your kids to work. You don't get special treatment."

9. Complainant found Thompson's comments offensive, and made that clear to Respondent's Chief Engineer.

10. Complainant filed his initial charge of discrimination on March 28, 2000.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (hereinafter "the Act").

2. Respondent is an "employer" as defined by section 2-101(B)(1)(a) of the Act and is subject to the provisions of the Act.

3. The statements made to Complainant were insufficient to create a hostile working environment.

4. The complaint does not state a claim upon which relief can be granted.

5. Respondent is entitled to a recommended order in its favor as a matter of law.

6. The complaint in this matter should be dismissed with prejudice.

DISCUSSION

Respondent, Chicago Board of Education, contracts with Ashley's Cleaning Service, Inc. to provide cleaning services for its schools. Ashley's Cleaning Service assigned Complainant, Tylee Martin, to work in one of Respondent's schools.

Complainant has a physical handicap, malignant neoplasm of

the brain. That condition causes partial paralysis to his left side. Respondent was aware of Complainant's handicap.

Ben Thompson worked for Respondent as an Assistant Engineer. In September of 1999, Thompson told Complainant, "Move out of the way, so that someone more capable can move that cabinet because of your disability." In November of 1999, Thompson told Complainant, "You can't move those boxes, because of your disability." In February of 2000, Complainant brought his child to work for several hours. While pointing to Complainant's leg, Thompson said, "I don't bring my kids here, and just because you are that way, you can't bring your kids to work. You don't get special treatment." The complaint asserts that Thompson's three statements constitute actionable harassment on the basis of a physical handicap.

There is virtually no case law in this forum on the issue of handicap harassment. However, there is no apparent reason why harassment on the basis of a physical handicap logically should not be subject to the same basic analysis as harassment on the basis of any other protected classification. Assuming that the allegations in the complaint are true, Thompson made three statements that offended Complainant over the course of approximately six months. Under Commission precedent, Thompson's statements simply do not rise to the level of actionable harassment because they fail to establish a hostile environment.

In its analysis of sexual harassment, the Commission has

found that the existence of a hostile environment is measured against an objective standard. **Kauling-Schoen and Silhouette American Health Spas**, ___ Ill. HRC Rep. ___, (1986SF0177, February 8, 1993). A minor incident does not become sexual harassment because of the sensitivity of the complainant. **Wade and Illinois Dep't of Human Rights**, ___ Ill. HRC Rep. ___, (1996CF0324, December 17, 1998). Isolated incidents generally do not generate a hostile environment unless they are quite severe, and unwelcome conduct which is not more than a few isolated instances will not create liability. **Klein and Jack Schmitt Ford, Ltd.**, ___ Ill. HRC Rep. ___, (1990SF0162, January 17, 1997).

Similarly, in the racial context, the Commission has held that behavior does not rise to the level of harassment unless it occurs frequently enough to constitute a term or condition of employment. **Hill and Peabody Coal Co.**, ___ Ill. HRC Rep. ___, (1991SF0123, June 26, 1996). According to the **Hill** decision, infrequent racial slurs are not enough to establish racial harassment. For example, the telling of three racial jokes in a two month period was found to be insufficient to rise to the level of racial harassment in **Thompson and Hoke Construction Co.**, ___ Ill. HRC Rep. ___, (1995SF0483, June 2, 1998).

The allegations in the instant case include only three handicap-related comments in a period of over six months. In fact, the earliest of those comments was made more than 180 days

prior to the filing of the initial charge of discrimination. Under the standards set forth in the precedents discussed above, the claimed allegations are not sufficient to constitute a term or condition of employment. Thus, they are insufficient to establish handicap-related harassment. In sum, the complaint fails to state a claim upon which relief can be granted, and Respondent is entitled to a recommended order in its favor as a matter of law.

RECOMMENDATION

Based upon the foregoing, even assuming all its factual allegations to be true, the complaint in this matter does not state a claim upon which relief can be granted. Accordingly, it is recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: July 3, 2002